Assembly Bill No. 2871

CHAPTER 105

An act to add and repeal Section 17053.80 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor July 7, 2000. Filed with Secretary of State July 10, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2871, Correa. Income taxes: credit: long-term care.

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law.

This bill would, for each taxable year beginning on or after January 1, 2000, and before January 1, 2005, allow a credit in an amount equal to $500 multiplied by the number of applicable individuals with respect to whom the taxpayer is an eligible caregiver for the taxable year.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. Section 17053.80 is added to the Revenue and Taxation Code, to read:

17053.80. (a) For each taxable year beginning on or after January 1, 2000, and before January 1, 2005, there shall be allowed as a credit against the ‘‘net tax,’’ as defined in Section 17039, an amount equal to five hundred dollars ($500) multiplied by the number of applicable individuals with respect to whom the taxpayer is an eligible caregiver for the taxable year.

(b) (1) (A) ‘‘Applicable individual’’ means, with respect to any taxable year, any individual who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in Section 1861(r)(1) of the Social Security Act) as being an individual with long-term care needs described in subparagraph (B) for a period--

(i) which is at least 180 consecutive days, and

(ii) a portion of which occurs within the taxable year.

That term shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the $39^1/_2$ month period ending on that due date (or such other period as the Franchise Tax Board prescribes) a physician (as so defined) has certified that that individual meets those requirements.

(B) An individual is described in this subparagraph if the individual meets any of the following requirements:

(i) The individual is at least six years of age and--

(I) is unable to perform (without substantial assistance from another individual) at least three activities of daily living, as defined in Section 7702B(c)(2)(B) of the Internal Revenue Code, due to a loss of functional capacity, or

(II) requires substantial supervision to protect that individual from threats to health and safety due to severe cognitive impairment and is unable to perform at least one activity of daily living, as defined in Section 7702B(c)(2)(B) of the Internal Revenue Code, or to the extent provided by the Franchise Tax Board (in consultation with the Secretary of Health and Welfare Agency), is unable to engage in age appropriate activities.

(ii) The individual is at least two years of age but less than six years of age and is unable due to a loss of functional capacity to perform (without substantial assistance from another individual) at least two of the following activities: eating, transferring, or mobility.

(iii) The individual is under two years of age and requires specific durable medical equipment by reason of a severe health condition or requires a skilled practitioner trained to address the individual's condition to be available if the individual's parents or guardians are absent.

(2) (A) A taxpayer shall be treated as an ‘‘eligible caregiver’’ for any taxable year with respect to the following individuals:

(i) The taxpayer.

(ii) The taxpayer's spouse.

(iii) An individual with respect to whom the taxpayer is allowed a credit under subdivision (d) of Section 17054 for the taxable year.

(iv) An individual who would be described in clause (iii) for the taxable year if Section 151(c)(1)(A) of the Internal Revenue Code, relating to gross income limitation, were applied by substituting for the federal exemption amount specified in that section, an amount equal to the sum of the federal exemption amount specified in that section, the federal standard deduction under Section 63(c)(2)(C) of the Internal Revenue Code, and any additional federal standard deduction under Section 63(c)(3) of the Internal Revenue Code which would be applicable to the individual if clause (iii) applied.

(v) An individual who would be described in clause (iii) for the taxable year if--

(I) the requirements of clause (iv) are met with respect to the individual, and

(II) the requirements of subparagraph (B) are met with respect to the individual in lieu of the support test of Section 152(a) of the Internal Revenue Code.

(B) The requirements of this subparagraph are met if an individual has as his or her principal place of abode the home of the taxpayer, and

(i) in the case of an individual who is an ancestor or descendant of the taxpayer or the taxpayer's spouse, is a member of the taxpayer's household for over half the taxable year, or

(ii) in the case of any other individual, is a member of the taxpayer's household for the entire taxable year.

(C) (i) If more than one individual is an eligible caregiver with respect to the same applicable individual for taxable years ending with or within the same calendar year, a taxpayer shall be treated as the eligible caregiver if each of those individuals (other than the taxpayer) files a written declaration (in the form and manner as the Franchise Tax Board may prescribe) that that individual will not claim that applicable individual for the credit under this section.

(ii) If each individual required under clause (i) to file a written declaration under clause (i) does not do so, the individual with the highest federal modified adjusted gross income (as defined in Section 32(c)(5) of the Internal Revenue Code for federal purposes) shall be treated as the eligible caregiver.

(iii) In the case of married individuals filing separate returns, the determination under this subparagraph as to whether the husband or wife is the eligible caregiver shall be made under the rules of clause (ii) (whether or not one of them has filed a written declaration under clause (i)).

(c) (1) No credit shall be allowed under this section to a taxpayer with respect to any applicable individual unless the taxpayer includes the name and taxpayer identification number of that individual, and the identification number of the physician certifying that individual, on the return of tax for the taxable year.

(2) The denial of any credit under subparagraph (1) may be made pursuant to Section 19051.

(d) The taxpayer shall retain the physician certification required by subdivision (b) and shall make that certification available to the Franchise Tax Board upon request.

(e) No credit shall be allowed under this section for any eligible caregiver whose adjusted gross income for the taxable year is equal to or greater than one hundred thousand dollars ($100,000) in the case of a married couple filing a joint return, and fifty thousand dollars ($50,000) in the case of all other individuals.

(f) This section shall remain in effect only until December 1, 2005, and as of that date is repealed.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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